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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,654	05/01/2001	Jonathan Richard Clare	8539	4546

27752 7590 06/16/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Applicati n No.

09/846,654

Applicant(s)

CLARE, JONATHAN RICHARD

Examiner

John R Hardee

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/34987 in view of Painter et al., US 5,763,378. The WO reference discloses built automatic dishwashing compositions comprising about 0.01% to about 5% of a blooming perfume composition in which at least about 50% of the ingredients of the blooming perfume composition are blooming perfume ingredients having a boiling point of less than about 260 degrees C and a C log P of at least about 3. The compositions most preferably comprise at least 8 different blooming perfume ingredients, as well as a bleach, about 10-75% of a builder and adjunct materials such as enzymes, surfactants, chelants and mixtures of same (p. 4, lines 6-24). The compositions may contain delayed blooming ingredients, which have a boiling point of about 260 degrees C or lower, a C log P of less than about 3, and blooming perfume ingredients are present in a ratio with the delayed blooming ingredients at a ratio of about 1 to 2 (p. 9, lines 4-19).

Accordingly, the percentages recited in claims 2 and 5 can be met by following the teachings of the reference. Non-blooming perfume ingredients may be present, most preferably at 2-7% of the compositions (p. 10, lines 4-9). Suitable blooming ingredients, delayed blooming ingredients and non-blooming ingredients are disclosed in Tables 1-3, respectively, and a number of the specific ingredients read on those recited by applicant. A number of the non-blooming ingredients of Table 3 are the same as the

Art Unit: 1751

base masking ingredients recited by applicant. Use of organic peroxides, especially diacyl peroxides, is disclosed at p. 40, line 7. The word "especially" appears to imply that diacyl peroxides are preferred ingredients. Dibenzoyl peroxide is used in several of the examples. Use of the compositions is disclosed (p. 60, lines 3-5, claim 11). The compositions may be liquids (p. 1, line 13). The reference does not teach the water content recited by applicant, but the examiner takes the position that this limitation will be met upon dilution of the composition in an automatic dishwasher in the course of normal use. This reference differs from the claimed subject matter in that it does not disclose the particle size of the diacyl peroxide or dibenzoyl peroxide.

Painter et al. teaches a process for making composite particulates comprising water-insoluble diacyl peroxide having a mean particle size of less than 300 microns (abstract). These particulates are particularly useful in automatic dishwashing detergents (col. 1, lines 10+). The particles are more preferably about 1-150 microns and most preferably about 10-100 microns (col. 4, lines 14-16). The preferred diacyl peroxide is dibenzoyl peroxide (col. 4, lines 30-31). It would have been obvious at the time the invention was made to incorporate the particulate peroxide compositions of Painter et al. into the automatic dishwashing detergents of the WO, because the WO discloses that diacyl peroxides may be used therein, and Painter et al. teaches at col. 4, lines 45+ that use of diacyl peroxide particles of the size taught therein is important for controlling residue formation and maximizing stain removal performance.

***Response to Arguments***

2. Applicant's arguments filed June 7, 2003 have been fully considered but they are not persuasive. Applicant argues that the Painter reference does not disclose applicant's recited particle size with sufficient specificity to constitute a *prima facie* case of obviousness. This is not persuasive because Painter discloses a more preferable particle size range of 1-150 microns. Applicant is reminded that the teachings of a reference are not confined to what is exemplified, nor even to what is disclosed as preferable. As a preferable range of 1-150 microns is disclosed, it would be obvious to employ particles of 1, 2, 3, 4 or 5 microns, all of which meet the "less than 10 microns, wherein at least about 25% of the particles are smaller than 6 microns" limitations, especially in the absence of any unexpected results arising from use of particles of the smallest size within the disclosed range.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1751

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'J. Hardee', with a stylized, cursive script.

John R. Hardee  
Primary Examiner  
June 10, 2003